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And the classes*

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

PIERS BLEWITT, on behalf of himself
and all others similarly situated,

Plaintiff,

v.

NATIONAL CONSUMER TELECOM
& UTILITIES EXCHANGE, INC.

Defendant.

Case No. 3:17-cv-1275

CLASS ACTION COMPLAINT

PRELIMINARY STATEMENTS

1. Plaintiff Piers Blewitt (“Plaintiff”) brings this class action against National Consumer Telecom & Utilities Exchange, Inc. (“NCTUE”), a consumer reporting agency. This action is based on NCTUE’s violations of the Fair Credit Reporting Act, 15 U.S.C. §§ 1681 – 1681x (FCRA) and the California Consumer

1 Credit Reporting Agencies Act, (CCRAA), CAL. CIV. CODE §§ 1785.1 *et seq.*
2 NCTUE routinely violates the rights of consumers who notify it that they dispute
3 the accuracy of information in NCTUE's files.

4 2. The FCRA was enacted to insure that consumer reporting is
5 conducted "in a manner which is fair and equitable to the consumer, with regard to
6 the confidentiality, accuracy, relevancy and proper utilization of such
7 information." 15 U.S.C. § 1681(b). An essential component of assuring that credit
8 reports are accurate is the provision providing consumers the right to dispute the
9 accuracy of information being reported, and the procedures that a consumer
10 reporting agency such as NCTUE must follow upon notice of a dispute. These
11 include the requirement that NCTUE conduct a reinvestigation to determine if the
12 disputed information is accurate, and may only continue to report the information
13 if it verifies its accuracy. 15 U.S.C. § 1681i(a). NCTUE must also provide the
14 consumer with written results of its reinvestigation, a consumer report that is based
15 on the consumer's file as revised as a result of the reinvestigation, and notice of
16 certain rights of the consumer. 15 U.S.C. § 1681i(a)(6).

17 3. The CCRAA contains provisions similar to the FCRA, requiring that
18 NCTUE reinvestigate consumers disputes, and send consumers written notice of
19 the results of reinvestigations, along with other information. CCRAA, § 1785.16.
20 This action involves the systematic violation of these state and federal statutory
21 requirements.

22 **JURISDICTION AND VENUE**

23 4. Jurisdiction of this court arises under 15 U.S.C. § 1681p and 28 U.S.C.
24 § 1331 and supplemental jurisdiction exists for the state law claims under 28
25 U.S.C. § 1367.

26 5. Venue lies properly in this district pursuant to 28 U.S.C. § 1391(b).
27

PARTIES

6. Plaintiff Piers Blewitt is an adult individual who resides in the Northern District of California.

7. NCTUE is a consumer reporting agency as defined by the FCRA, 15 U.S.C. § 1681a(f), and a consumer credit reporting agency as defined by the CCRAA, § 1785.3(d).

FACTUAL ALLEGATIONS

8. NCTUE describes itself as “a membership of companies that provide services (telecommunication, pay TV and utilities) and report and share data relative to their customers’ accounts,” including payment and account history. <http://www.nctue.com/about>.

9. NCTUE maintains a database of consumer data and sells it to member companies in order to evaluate customers’ eligibility for services. see http://www.nctue.com/member_benefits.

10. NCTUE holds itself out as a “consumer reporting agency that maintains data such as payment and account history, reported by telecommunication, pay TV and utility service providers that are members of NCTUE.” see <http://www.nctue.com/about>.

11. The FCRA requires that if a consumer notifies a consumer reporting agency (“CRA”) that the consumer disputes the accuracy of any item of information in the consumer’s file, the consumer reporting agency must “conduct a reasonable reinvestigation to determine if the disputed information is accurate....” 15 U.S.C. § 1681i(a)(1)(A). The reinvestigation must be completed within 30 days of the receipt of the dispute. 15 U.S.C. § 1681i(a)(1)(A).

12. The FCRA requires that if, after any reinvestigation, the disputed item is found to be inaccurate or incomplete, or cannot be verified, the CRA must

1 promptly delete the item of information from the file, or modify the item, as
2 appropriate, based on the results of the reinvestigation. 15 U.S.C. § 1681i(a)(5)(A).

3 13. The FCRA also requires that the CRA provide written notice to the
4 consumer of the results of a reinvestigation not later than 5 business days after the
5 completion of the reinvestigation. 15 U.S.C. § 1681i(a)(6)(A). In addition to the
6 notice of the results, the CRA must also provide to the consumer in writing: (i) a
7 statement that the reinvestigation is completed; (ii) a consumer report that is based
8 on the consumer's file as revised as a result of the reinvestigation; (iii) a notice that
9 if the consumer requests, the CRA shall provide a description of the procedure used
10 to determine the accuracy or completeness of the information, and the business
11 name and address of any of information contacted in connection with such
12 information; (iv) a notice that the consumer has the right to add a statement to the
13 consumer's file disputing the accuracy or completeness of the information; and (v)
14 a notice that the consumer has a right to request notifications to persons who
15 received the consumer's report if information has been deleted. 15 U.S.C. §
16 1681i(a)(6)(B).

17 14. The CCRAA contains provisions that are almost identical to those in
18 the FCRA, which require a CRA to reinvestigate to determine if disputed
19 information is accurate, to delete or correct information that is found to be
20 inaccurate or that cannot be verified, and to send the consumer written notice of
21 the results of the reinvestigation along with a revised consumer report and a notice
22 of other rights of the consumer. CCRAA, § 1785.16(a), (b) and (d).

23 15. Nevertheless, despite the clear mandates of FCRA § 1681i(a) and
24 CCRAA § 1785.16, NCTUE routinely fails to reinvestigate disputed information,
25 delete or correct information that is not verified as accurate, and provide consumers
26

1 who dispute information with written notice of the results of reinvestigations and
2 the other information to which they are entitled under these statutes.

3 16. Plaintiff obtained his consumer report from NCTUE dated February
4 24, 2015. NCTUE was reporting inaccurate information on an account with
5 Comcast Atlanta #CS822017676036* (“account #CS822017676036*”), stating
6 that the account had been delinquent, was unpaid and had a current balance of
7 \$6.29. None of that was true. The account had never been delinquent, it had been
8 paid in full, and there was no balance owing.

9 17. Plaintiff sent a letter to NCTUE, dated March 10, 2015, in which he
10 disputed its reporting of account #CS822017676036*, informing NCTUE that he
11 had never been delinquent on the account and that it was paid in full. He asked
12 NCTUE to investigate and expunge the derogatory comments on his NCTUE
13 report, and to send him confirmation of the deletion and an updated report.

14 18. The dispute letter was sent by certified mail to the address on the
15 NCTUE report that NCTUE said should be used to dispute information on the
16 report. The dispute letter was received on March 24, 2015.

17 19. Despite the clear requirements of the FCRA and the CCRAA,
18 NCTUE did not reinvestigate the disputed information.

19 20. Despite the clear requirement of the FCRA and the CCRAA, NCTUE
20 did not delete or correct the disputed information.

21 21. Despite the clear requirement of the FCRA and the CCRAA, NCTUE
22 did not provide any results of reinvestigation to Plaintiff.

23 22. These violations of the FCRA and CCRAA caused inaccurate,
24 derogatory and harmful information to remain on Plaintiff’s consumer report, and
25 deprived him of accurate information in his credit file with NCTUE which he is
26 entitled to under the FCRA and CCRAA.

1 23. Plaintiff obtained his consumer report from NCTUE dated August 15,
2 2015. NCTUE continued to report the inaccurate information that Plaintiff
3 previously disputed to NCTUE, including that account #CS822017676036* had
4 been delinquent, was unpaid and had a current balance of \$6.29. The fact that the
5 disputed account information was exactly the same as it had been prior to
6 Plaintiff's dispute shows that NCTUE had not reinvestigated the information, and
7 had not deleted or corrected the disputed information.

8 24. Plaintiff sent a letter to NCTUE dated August 28, 2015, in which he
9 again disputed its reporting of account #CS822017676036*. He stated that he had
10 sent a dispute letter dated March 10, 2015 and had not received a reply. He again
11 disputed the balance due and the delinquency. He informed NCTUE that he was
12 never delinquent and there was never an unpaid final bill. He asked NCTUE to
13 investigate and expunge the derogatory comments on his NCTUE report, and to
14 send him confirmation of the deletion and an updated report.

15 25. The dispute letter was sent by certified mail to the address on the
16 NCTUE report that NCTUE said should be used to dispute information on the
17 report. The dispute letter was received on August 29, 2015.

18 26. NCTUE again failed to reinvestigate the disputed information, delete
19 or correct the disputed information, or provide any results of reinvestigation to
20 Plaintiff. These violations of the FCRA and CCRAA caused inaccurate,
21 derogatory and harmful information to remain on Plaintiff's consumer report, and
22 deprived him of information which he is entitled to under the FCRA and CCRAA.

23 27. NCTUE fails, as a matter of policy and practice, to reinvestigate
24 disputed information, delete or correct disputed information, or provide consumers
25 with written results of reinvestigations, as required by the FCRA § 1681i(a)(1), (5)
26 and (6)(A) and CCRAA§ 1785.16(a), (b) and (d).
27

1 any judicial officers assigned to the case, and any such person's
2 immediate family.

3 b. All persons residing within the United States and its Territories who,
4 within two years prior to the filing of this action and continuing through
5 the conclusion this action, notified NCTUE of a dispute as to the accuracy
6 or completeness of information, and for whom NCTUE did not
7 reinvestigate the disputed information, delete or correct the disputed
8 information, or to whom NCTUE did not provide written notice of the
9 results of reinvestigations and the information required by the FCRA.
10 Excluded from the class is all disputes that were determined to be frivolous
11 and for which the consumer was notified by NCTUE within 5 days of the
12 frivolity determination. Also excluded from the class are class counsel,
13 any persons employed at the law firms of class counsel or any judicial
14 officers assigned to the case, and any such person's immediate family.

15 For violations of the CCRAA:

16
17 a. All persons residing within the United States and its Territories who,
18 within seven years prior to the filing of this action and continuing through
19 the conclusion of this action, notified NCTUE of a dispute as to the
20 accuracy or completeness of information, and for whom NCTUE did not
21 reinvestigate disputed information, delete or correct disputed
22 information, or to whom NCTUE did not provide written notice of the
23 results of reinvestigations and the information required by the CCRAA.
24 Excluded from the class are class counsel, any persons employed at the
25 law firms of class counsel, or any judicial officers assigned to the case,
26 and any such person's immediate family.

1 b. All persons residing within the United States and its Territories who,
2 within two years prior to the filing of this action and continuing through
3 the conclusion of this action, notified NCTUE of a dispute as to the
4 accuracy or completeness of information, and for whom NCTUE did not
5 reinvestigate disputed information, delete or correct disputed
6 information, or to whom NCTUE did not provide written notice of the
7 results of reinvestigations and the information required by the CCRAA.
8 Excluded from the class are class counsel, any persons employed at the
9 law firms of class counsel, or any judicial officers assigned to the case,
10 and any such person's immediate family.

11
12 31. The classes are so numerous that joinder of all members is
13 impracticable. Plaintiff avers upon information and belief that the classes number
14 in the thousands. Information concerning the exact size of the classes is within the
15 exclusive possession of NCTUE.

16 32. There are questions of law and fact common to the classes that
17 predominate over any questions affecting only individual class members. The
18 common legal and factual questions include, among others:

19 a. whether as a matter of common practice, NCTUE fails to conduct
20 reinvestigations of disputed information, or alternatively delete such information
21 in the timeframes required by the FCRA and CCRAA.

22 b. whether NCTUE violated section 1681i(a)(6)(A) of the FCRA by
23 failing to provide consumers with written notice of the results of reinvestigations;

24 c. whether NCTUE violated section 1681i(a)(6)(B) of the FCRA by
25 failing to provide consumers with the information required under section
26 1681i(a)(6)(B);

27 d. whether the violations of the FCRA were willful;

- 1 e. whether the violations of the FCRA were negligent;
- 2 f. whether NCTUE violated section 1785.16(d) of the CCRAA by
- 3 failing to provide consumers with written notice of the results of reinvestigations;
- 4 g. whether NCTUE violated section 1785.16(d) of the CCRAA by
- 5 failing to provide consumers with the information required under section
- 6 1785.16(d);
- 7 h. whether the violations of the CCRAA were willful; and
- 8 i. whether the violations of the CCRAA were negligent.

9 33. Plaintiff's claims are typical of the claims of the classes, which all
10 arise from the same operative facts and are based on the same legal theories.

11 34. Plaintiff has the same claims for statutory and punitive damages that
12 he seeks for absent class members.

13 35. Plaintiff will fairly and adequately protect the interests of the classes.
14 Plaintiff is committed to vigorously litigating this matter. Plaintiff's interest is
15 aligned with, and is not antagonistic to, the interests of the members of the classes
16 he seeks to represent. Plaintiff has retained counsel experienced in handling
17 consumer class action litigation, and they intend to prosecute this action
18 vigorously. Plaintiffs and their Counsel will fairly and adequately protect the
19 interests of members of the Classes.

20 36. A class action is a superior method for fair and efficient adjudication
21 of this controversy. Common questions of law and fact predominate over questions
22 affecting only individual class members. Management of the class claims is likely
23 to present significantly fewer difficulties than those presented in many individual
24 claims. The prosecution of separate actions by individual members of the classes
25 would create a risk of inconsistent or varying adjudications with respect to
26 individual members which would establish incompatible standards of conduct for

the parties opposing the class, as well as a risk of adjudications with respect to individual members which would as a practical matter be dispositive of the interests of other members not parties to the adjudications or substantially impair or impede their ability to protect their interests. In addition, individualized litigation would increase the delay and expense to all parties and to the court system presented by the complex legal and factual issues raised by NCTUE's conduct. By contrast, the class action device will result in substantial benefits to the litigants and the Court by allowing the Court to resolve numerous individual claims based upon a single set of proof in a unified proceeding.

COUNT I - CLASS CLAIM

VIOLATION OF THE FCRA § 1681i(a)

37. Plaintiff incorporates the foregoing paragraphs as though the same were set forth at length herein.

38. NCTUE willfully and/or negligently failed to comply with the FCRA by engaging in the following conduct:

a. failing to conduct a reinvestigation of the information disputed by the Plaintiff, or alternatively delete it, after being notified of the dispute;

b. failing to provide consumers with written notice of results of reinvestigations, in violation of 15 U.S.C. § 1681i(a)(6)(A); and

c. failing to provide consumers with the information required under FCRA, § 1681i(a)(6)(B), in violation of 15 U.S.C. § 1681i(a)(6)(B).

39. Pursuant to sections 1681n and 1681o of the FCRA, NCTUE is liable to Plaintiff and all Class members for its failure to comply with the FCRA, in an amount equal to the sum of:

a. actual damages,

- 1 b. damages of not less than \$100 and not more than \$1,000 per violation
2 for each Class member,
3 c. punitive damages,
4 d. attorney fees, and
5 e. costs.

6 **COUNT II – CLASS CLAIM**

7 **VIOLATION OF THE CCRAA § 1785.16**

8 40. Plaintiff incorporates the foregoing paragraphs as though the same
9 were set forth at length herein.

10 41. NCTUE willfully and/or negligently violated the CCRAA by
11 engaging in the following conduct:

12 a. failing to conduct a reinvestigation of the information disputed by the
13 Plaintiff, or alternatively delete it, after being notified of the dispute;

14 b. failing to provide consumers with written notice of results of
15 reinvestigations, in violation of CCRAA § 1785.16(d)

16 c. failing to provide consumers with the information required under
17 CCRAA, § 1785.16(d)(1) through (8), in violation of CCRAA § 1785.16(d).

18 42. Pursuant to section 1785.31 of the CCRAA, NCTUE is liable to
19 Plaintiff and all Class members for its failure to comply with the CCRAA, in an
20 amount equal to the sum of:

- 21 a. actual damages,
22 b. punitive damages of not less than \$100 and not more than \$5,000 per
23 violation for each Class member,
24 c. injunctive relief,
25 d. attorney fees, and
26 e. costs.

JURY TRIAL DEMAND

Plaintiff demands trial by jury on all issues.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against NCTUE for himself and for the Class members as follows:

On Count One:

(a) An order certifying the proposed Class under Rule 23 of the Federal Rules of Civil Procedure and appointing Plaintiff and their counsel to represent the Class;

(b) Actual damages;

(c) Statutory damages in the amount of not less than \$100 and not more than \$1,000 per violation per Class member;

(d) Punitive damages in an amount to be determined by the jury;

(e) Attorney fees and costs; and

(f) Such other relief as may be just and proper.

On Count Two:

(a) An order certifying the proposed Class under Rule 23 of the Federal Rules of Civil Procedure and appointing Plaintiff and their counsel to represent the Class;

(b) An order enjoining NCTUE's conduct in violation of the CCRAA;

(c) Actual damages;

(d) Punitive damages of not less than \$100 and not more than \$5,000 per violation per Class member;

- 1 (e) Attorney fees and costs; and
2 (f) Such other relief as may be just and proper.
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4

5 Dated: March 10, 2017

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